

**October 5, 2017**  
**REGULAR MEETING OF THE CITY COUNCIL**  
**COUNCIL CHAMBERS – CITY HALL**  
**5:45 p.m.**

**Present:** Mayor Barbara G. Volk, Mayor Pro Tem Steve Caraker and Council Members: Jeff Miller, Jerry Smith, and Ron Stephens

**Staff Present:** City Manager John F. Connet, City Clerk Tammie Drake, City Attorney Samuel H. Fritschner, Assistant City Manager Brian Pahle, Development Assistance Director Susan Frady, Engineering Director Brent Detwiler, Fire Chief Joseph Vindigni, Pam Ludwig, Budget Analyst Adam Murr, Public Works Director Tom Wooten

**1. Call to Order:** Mayor Volk called the regular meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with five members in attendance.

**2. Invocation and Pledge of Allegiance:** A moment of silence for prayer was followed by the Pledge of Allegiance to the Flag.

**3. Public Comment Time:** *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda.* Mayor Volk asked speakers to limit remarks to two minutes per person.

Judith Sheehan, 1034 Kanuga Rd., spoke on behalf of friends and neighbors regarding NCDOT's proposal for the widening of Kanuga Road. She expressed concerns about destruction of old trees and protection of homes on the historic registry. Approximately 18 people stood in support of Ms. Sheehan's comments. Mayor Volk commented the City Council will have follow-up meetings with NCDOT. She stated the City Council will reach a consensus and present where they stand in an open meeting.

Barbara Hughes, 315 North Main Street, said a prayer to comfort in the aftermath of the Las Vegas, NV shooting incident.

Roy Mosely, 25 Fox Chase, spoke in opposition to the NCDOT proposal of widening Kanuga Road citing concerns about destruction of trees, homes, the cost of the project and safety concerns.

Mary Herron, 414 S. Whitted St., spoke regarding a four-way stop at S. Whitted Street, stating they are requesting something to slow traffic and cited major safety concerns with children in the neighborhood.

Ray Gibbs, 310 Beaucrest Dr., stated a four-way stop where proposed will not reduce traffic speed on Whitted Street. He stated the stop sign should be placed at the bottom of the hill.

Ken Fitch, 1046 Patton St., stated widenings of roadways has become a major issue. He stated there is a similar project proposed in Laurel Park on Highway 64 W. He asked whether NCDOT has a master plan to continue road widening in this region.

Richard Freudenberger, 255 Warren Lane, expressed concerns about the widening of Kanuga Road.

**4. Consideration of Agenda:**

**Consent Agenda:**

**Moved to November Agenda: E. Consideration of an Application to Designate a Heritage Tree at 941 Kanuga Road – to be considered next month with additional trees**

**Removed For Discussion: F. Consideration of an Ordinance Amending Section 26-38 of the Code of Ordinances Pertaining To Nuisances - Permitting the City to Address Graffiti under the Nuisance Provision**

**Addition: 6J. Consideration of Capital Project Ordinance and Budget Amendment for Mill Street Waterline Project**

**Regular Agenda:**

**Addition: 6c: White Cane Awareness Day Proclamation**

Mayor Pro Tem Caraker moved approval of the agenda with the noted changes. A unanimous vote of the Council followed. Motion carried.

**5. Consideration of Consent Agenda:** *Consent agenda items are considered routine, non-controversial in nature and are considered and disposed of through a singular motion and vote.*

A. **Consideration of Minutes:** September 7, 2017 Regular Meeting

B. **Consideration of Budget Amendments:** Ms. Brian Pahle, Assistant to the City Manager, presented the following: Fund 68, Decrease of \$80,114 for the purchase of a new garbage truck

C. **Consideration of a Resolution to Accept a Grant from the Department of Public Safety Governor’s Highway Safety Program for \$5,000 for BikeSafeNC and Associated Grant Project Ordinance and Budget Amendment:** Mr. Pahle presented a resolution to accept a grant from the Governor’s Highway Safety Program for \$5,000 and the budget amendment necessary to record the grant funds.

Resolution #17-1069

**RESOLUTION BY THE GOVERNING BODY OF THE CITY OF HENDERSONVILLE**

WHEREAS, the City of Hendersonville Police Department (herein called the "Agency") has completed an application contract for traffic safety funding; and City of Hendersonville City Council (herein called the "Governing Body") has thoroughly considered the problem identified and has reviewed the project as described in the contract, and

WHEREAS, the project referenced above is in the best interest of the Governing Body and the general public, and

WHEREAS, the City Manager is authorized to file, on behalf of the Governing Body, an application contract in the form prescribed by the Governor’s Highway Safety Program for federal funding in the amount of \$5,000 to be made to the Governing Body to assist in defraying the cost of the project described in the contract application, and

WHEREAS, the Governing Body has formally appropriated the cash contribution of \$0 as required by the project contract, and

WHEREAS, that the project director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the contract, if approved, or as may be required by the Governor’s Highway Safety Program, and

WHEREAS, that certified copies of this resolution be included as part of the contract referenced above; and

WHEREAS, that this resolution shall take effect immediately upon its adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE HENDERSONVILLE CITY COUNCIL:

That City of Hendersonville does hereby accept the Governor’s Highway Safety Program grant of \$5,000.

Adopted this the fifth day of October, 2017 at 145 5th Avenue East, Hendersonville, North Carolina.

/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, City Clerk

Ordinance #17-1070

**GRANT PROJECT ORDINANCE FOR THE EXECUTION OF THE GOVERNOR’S HIGHWAY SAFETY PROGRAM  
BIKE SAFE PROGRAM GRANT**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

- Section 1: The project authorized is a grant project described as the Governor’s Highway Safety Program.
- Section 2: The following amounts are appropriated for the project:
- | Account Number                     | Account Name          | Total Budget    |
|------------------------------------|-----------------------|-----------------|
| 3450000 539400                     | In State Travel       | \$ 2,000        |
| 3450000 539405                     | Out of State Travel   | \$ 2,000        |
| 3450000 539500                     | In State Training     | \$ 500          |
| 3450000 539505                     | Out of State Training | \$ 500          |
| <b>Total Project Appropriation</b> |                       | <b>\$ 5,000</b> |
- Section 3: The following revenues are anticipated to be available via grant proceeds:
- | Account Number               | Account Name  | Total Budget    |
|------------------------------|---------------|-----------------|
| 3450000 434991               | Grant Revenue | \$ 5,000        |
| <b>Total Project Revenue</b> |               | <b>\$ 5,000</b> |
- Section 4: The Finance Director is hereby directed to maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.
- Section 5: Funds may be advanced from the General Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.
- Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.
- Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.
- Section 8: Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fifth day of October 2017.

/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, City Clerk  
Approved as to form: /s/Samuel H. Fritschner, City Attorney

Budget Amendment: Fund 345, An amendment to establish funding for a grant project ordinance for the Governor's Highway Safety Program – Bike Safe Program grant. Increase of \$5,000

**D. Consideration of Special Event Permit for 2017 Bearfootin' Art Auction:** Ms. Frady reported a change in the special event permit for the Bearfootin’ Art Auction. A request was made to close the parking spaces in front of the Historic Courthouse for a wine and cheese tent. The parking spaces will be blocked from 1 p.m. to 6 p.m. The Special Events Committee voted unanimously to recommend the Council approve the change to the permit.

~~E. Consideration of an Application to Designate a Heritage Tree at 941 Kanuga Road~~

~~F. Consideration of an Ordinance Amending Section 26-38 of the Code of Ordinances Pertaining To Nuisances – Permitting the City to Address Graffiti under the Nuisance Provision:~~ Removed for Discussion

**G. Consideration of Capital Project Ordinance for the Acquisition, Construction and Installation of the Buncombe Street Stormwater Project:** Mr. Pahle explained under NCGS 159-13.2(a)(1) the City Council may adopt a capital project ordinance to appropriate revenue and expenditures for a project involving the construction or acquisition of a capital asset. He recommended this project be set up in a capital project ordinance to account for all costs of the project in a separate fund and provide a multi-year budget in the event there are any costs that span past the fiscal year end June 30.

Ordinance #17-1071

**CAPITAL PROJECT ORDINANCE FOR THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE BUNCOMBE STREET STORMWATER PROJECT**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a City stormwater project described as the Buncombe Street Stormwater Project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
4670000	519000	Professional Services	\$ 8,000
4670000	559850	Construction Contract	\$ 139,000
4670000	599100	Contingencies	\$ 20,850
Total Project Appropriation			\$ 167,850

Section 3: The following revenues are anticipated to be available via transfers from the General Fund and Stormwater Fund for project expenses:

Account Number		Account Name	Total Budget
4670000	998067	Transfer in From Stormwater Fund	\$ 149,515
4670000	998010	Transfer in From General Fund	\$ 18,335
Total Project Revenue			\$ 167,850

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the General Fund and Stormwater Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fifth day of October 2017.

/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, City Clerk  
Approved as to form: /s/Samuel H. Fritschner, City Attorney

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Budget Amendment: Funds 67, 467, an amendment to increase the budget for the Buncombe Street Stormwater project, associated with the capital project ordinance establishing Fund 467. This project will require the reprioritization of existing budgeted funds in the Stormwater Fund and increases in fund balance appropriation for the Stormwater Fund and General Fund. The total cost of the project is estimated at \$167,850.

**H. Consideration of a Resolution Adopting a Tobacco Use Policy:** Mr. Pahle presented a resolution Adopting a Tobacco Use Policy and Administrative Procedure to regulate tobacco use within the City.

Resolution #17-1072

**A RESOLUTION TO ADOPT THE REVISED TOBACCO USE POLICY**

WHEREAS, The Hendersonville City Council has previously adopted a Tobacco Use Policy, and

WHEREAS, it is recognized that policies must evolve as the City, society, and technology evolve, and

WHEREAS, the revisions to these policies will provide continuous improvement to the City of Hendersonville's practices and procedure relating to tobacco use, and

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE THAT:

Section 1. The City Council hereby adopts the Tobacco Use Policy.

Section 2. This resolution shall become effective upon its adoption and approval.

Adopted this fifth day of October 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

#### **TOBACCO USE POLICY**

I. Purpose: It is the policy of the City to provide a safe, healthy and efficient work environment for its employees and to protect the public that it serves by establishing and maintaining a healthy and professional work environment where the use of tobacco products is monitored and regulated. Tobacco use is hazardous and affects all segments of the community, including the workplace.

#### **II. Applicability**

1. Applicants who have been offered employment will be made aware of the City's Tobacco Use Policy.
2. All employees are covered under this Tobacco Use Policy and are subject to disciplinary action for violations.
3. Employees will be made aware of tobacco-permitted areas designated by the City Manager or their designee.
4. Visitors and members of the public will be made aware of tobacco-permitted areas designated by the City Manager or their designee through appropriate public signage.
5. Tobacco products include any product containing, made, or derived from tobacco that is intended for human consumption, including cigarettes, snuff, snus, chewing tobacco, e-cigarettes, and any other kinds and forms of tobacco. E-cigarettes means any electronic oral device, such as one composed of heating elements, battery, and/or electronic circuit, which provides a vapor or nicotine or any other substances, and the use of inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

III. Prohibited Conduct for All City Employees and City Visitors: The following conduct is expressly prohibited. Violations will result in disciplinary action up to and including termination:

1. Consumption or use of tobacco products while on City premises that is not designated as a tobacco-permitted area or is the explicit property of the applicant or employee, such as the individual's personal vehicle.
2. Consumption or use of tobacco products while in City-supplied vehicles.
3. Taking extra breaks to use personal tobacco products.

IV. Procedures and Violations: The City of Hendersonville recognizes the hazards caused by exposure to tobacco. The provisions of this policy shall be enforced by supervisors and department heads. It is the employee's and the visitor's responsibility to comply fully with the Tobacco Use Policy at all times.

1. PRE-EMPLOYMENT Applicants will be made aware of the City's commitment to a healthy workforce and workplace. Applicants will also be made aware of the Tobacco Use Policy and any other City procedures relating to the use of tobacco.
2. CURRENT EMPLOYEES All full time and part time employees will be made aware of the Tobacco Use Policy. City employees are prohibited from using any form of tobacco while on City property, or in City vehicles unless designated as a tobacco-permitted area.

When a variance is granted and an area is designated as a tobacco-permitted area, City employees will be made aware of such variance. The City Manager, or their designee, shall have the authority to designate an employee tobacco-permitted area for each City facility where employees are based.

Employee tobacco-permitted areas at City facilities shall be provided with one appropriate receptacle for cigarette butts and other tobacco-associated remnants. This will serve as the only marker for employee tobacco-permitted areas. No signage will be posted. Employees may refer to this policy or to postings within their workplace for notification and clarification.

Employees should work to maintain a professional demeanor in all public interactions and should ensure that the consumption or use of tobacco does not detriment the professional appearance of the City.

Additional support services may be provided through the Human Resources Department. Employees who use tobacco products are eligible for participation in tobacco cessation programs sponsored by the City.

3. VISITORS: Visitors are expected to comply with the Tobacco Use Policy while on City property, in City vehicles, and in City work areas.

The use of tobacco products is prohibited except in areas specifically designated as tobacco-permitted areas for the general public. Clear signage will mark public tobacco-permitted areas.

All other parks, greenways, and undeveloped City-owned property shall remain tobacco-free. Tobacco use is permitted on public sidewalks adjacent to parks and public spaces, but not within the boundaries of the parks or public facilities.

Employees, visitors, and members of the public who violate this policy are subject to fines as provided in the City of Hendersonville City Ordinances, Chapter 26 Article III, as permitted by N. C. G. S. § 130A-498.

V. Summary: No part of this policy, nor any of its procedures, is intended nor shall be construed to affect the City of Hendersonville's right to manage its workplace, to discipline its employees, to change the "at will" nature of employment with the City, or to engage with members of the community in a positive manner. Since it is impossible to anticipate every situation which may arise under this policy, the Human Resources Director should be contacted to resolve any situation not addressed herein. This contact should be made before action is initiated, if at all practical.

**I. Consideration of a Resolution to Exempt the NC Highway 280 Water Line Extension Project from the Provisions of G.S. 143-64.31 and Consideration of a Proposal from Critek Engineering Group for the Completion of the Project Design and Construction**

**Administration:** Mr. Detwiler reported City staff has been working with the developers of the Mills River Fire Department relocation and Mills River Landing subdivision projects (both along NC 280 in Mills River) to extend water improvements in the area in conjunction with the Water Master Plan. Since water line extensions are necessary for both development projects (and designed by different engineers) staff has proposed that the City design and build the line extension along NC 280 to feed both developments and execute reimbursement agreements with each of the developers for their respective water improvement requirements. This will ensure the line improvements meet the requirements of the Master Plan and are sized and designed accordingly. Alvin Fuller, former Utilities Engineer with the City and now with Critek Engineering Group, began the design of this project while he was with the City. Staff is requesting his firm prepare a proposal to complete the design since he is familiar with the project and is best equipped to provide an efficient and cost-effective design.

Mr. Detwiler explained in North Carolina, the procurement of professional services performed by architects, engineers, surveyors, and construction managers at risk is governed by NCGS 143-64.31, sometimes referred to as the "Mini-Brooks Act." The Qualifications Based Selection (QBS) process focuses on the qualifications of potential firms rather than their fees. This is often done by using a request for qualifications (RFQ) to solicit responses from interested firms.

Mr. Detwiler provided a resolution to exempt the NC 280 Water Line Extension design from the Qualified Based Selection process for Council's consideration and approval given the background Mr. Fuller has with the project and to hire the most qualified firm.

Mr. Detwiler also provided a proposal from Critek Engineering Group. He requested Council's approval of the resolution and to authorize the City Manager to execute a contract with Critek Engineering Group to perform the design and construction management work associated with the NC 280 Water Line Extension project.

Resolution #17-1073

**RESOLUTION EXEMPTING NC 280 WATER LINE EXTENSION PROJECT FROM G.S. 143-64.31**

WHEREAS, G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services, and design-build services (collectively "design services") to be based on qualifications and without regard to fee;

WHEREAS, the City proposes to enter into one or more contracts for design services for work on the NC 280 Water Line Extension project; and

WHEREAS, G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than \$50,000; and

WHEREAS, the estimated fee for design services for the above-described project is less than \$50,000.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE RESOLVES:

Section 1. The above-described project is hereby made exempt from the provisions of G.S. 143-64.31.

Section 2. This resolution shall be effective upon adoption.

This is fifth day of October 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

**J. Consideration of a Resolution to Accept Grant Funds from the NC Department of Commerce for \$238,700, and Associated Project Ordinance and Budget Amendment for the Elkamet & Demmel Waterline Improvements Project:** Mr. Murr presented the following resolutions for Council's consideration. The grants funds are associated with the waterline improvements for Elkamet and Demmel.

Resolution #17-1074

**RESOLUTION BY THE GOVERNING BODY OF THE CITY OF HENDERSONVILLE**

WHEREAS, the City of Hendersonville has been awarded grant funding from the North Carolina Department of Commerce Rural Economic Development Division to upgrade water lines for economic development purposes, and

WHEREAS, the project referenced above is in the best interest of the Governing Body and the general public, and

WHEREAS, the Mayor is authorized to execute this grant, on behalf of the Governing Body in the amount of \$238,700 following review by the City Attorney, and

WHEREAS, certified copies of this resolution be included as part of the contract referenced above; and

WHEREAS, that this resolution shall take effect immediately upon its adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE HENDERSONVILLE CITY COUNCIL:

That City of Hendersonville does hereby accept the North Carolina Department of Commerce Rural Economic Development Division grant of \$238,700.

Adopted this the fifth day of October 2017 at 145 5th Avenue East, Hendersonville, North Carolina.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

**GRANT PROJECT ORDINANCE FOR  
THE EXECUTION OF THE ELKAMET & DEMMEL WATER IMPROVEMENTS PROJECT GRANT**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

Section 1: The project authorized is a grant project described as the Elkamet & Demmel Water Improvements Project.

Section 2: The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
3350000	434991	Grant Revenue	\$ 226,764
3350000	447060	Contribution from Elkamet	\$ 5,968
3350000	447061	Contribution from Demmel	\$ 5,968
Total Project Revenue			\$ 238,700

Section 3: The following revenues are anticipated to be available via grant proceeds and direct contributions from private entities:

Account Number		Account Name	Total Budget
3350000	559600	Capital Outlay-Lines	\$ 238,700
Total Project Appropriation			\$ 238,700

Section 4: The Finance Director is hereby directed to maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this fifth day of October 2017.

/s/Barbara G. Volk, Mayor  
Attest: /s/Tammie K. Drake, City Clerk  
Approved as to form: /s/Samuel H. Fritschner, City Attorney

**Mayor Pro Tem Caraker moved approval of the remaining items listed on the consent agenda. A unanimous vote of the Council followed. Motion carried.**

**6. Recognitions:**

**A. American Pharmacists Month Proclamation:** Mayor Volk presented a proclamation to Jared McKinney in recognition of American Pharmacists Month.

**B. Fire Prevention Proclamation:** Mayor Volk presented a proclamation to Fire Marshal Justin Ward for Fire Prevention Month. Council Member Miller commended the Fire Department for their actions in the recent fire at the apartments on Sixth Avenue. He also commended Sergeant Bruce Darrah who spotted the fire, called it in, and with backup officers knocked on many doors to vacate the building, saving many lives.

**C. White Cane Awareness Day Proclamation:** Mayor Volk presented a proclamation to Mr. Michael Nelopovich for White Cane Awareness.

**7. Public Hearing – To Receive Citizen Input Regarding Submittal of a Grant Application to the NC Department of Commerce for a CDBG Grant:** Mr. Holloway addressed the Council and explained this public hearing is to inform citizens of the City’s opportunity to apply for Federal funding and to obtain input on what projects/activities should be included in funding proposals and applications to Community Assistance.

Mr. Holloway stated the Community Development Block Grant (CDBG) is a U.S. Housing and Urban Development (HUD) program that helps local governments improve deteriorating residential neighborhoods, support public services, install water and sewer facilities for residential areas or provide funds to job-creating industrial sites and provide loans or grants to large and small businesses.

He stated the NC Department of Commerce's Rural Economic Development Division administers CDBG funds for economic development activities. Funds for CDBG residential infrastructure activities are administered through the NC Department of Environmental Quality.

Mayor Volk asked for questions from the Council. There was none.

Mayor Volk opened the public hearing at 6:15 p.m. in accordance with notice published in the Hendersonville Lightning and invited public input on grant applications. No one expressed a desire to speak. The public hearing was closed. **No action was required or taken by the Council.**

**7a. Consideration of an Ordinance Amending Section 26-38 of the Code of Ordinances Pertaining To Nuisances - Permitting the City to Address Graffiti under the Nuisance Provision:**

City Attorney Fritschner offered a legal framework to address graffiti issues. He presented a proposed amendment to the nuisance ordinance amending the definition of nuisance to include graffiti on external surfaces. He explained this ordinance amendment allows the enforcer of the ordinance to treat graffiti as a nuisance but it does not discuss remedies to particular graffiti problems.

Mrs. Frady addressed the Council and stated this will be used as a last option. She stated several departments met and discussed abating graffiti downtown. She stated a list and map of the properties with graffiti was developed and staff is planning to meet with the property owners. She stated the Police Department will also meet with the property owners to give some instructions and tips on securing their properties, discuss things the City can do, etc. to prevent it in the future.

Mrs. Frady explained staff is considering a "clean" sweep so all properties with graffiti will be cleaned.

Council Member Miller commented he would support enforcement and prosecution of violators, without a felony charge, with the perpetrators removing the graffiti. City Attorney Fritschner stated staff is working on an appropriate penalty. He explained it is not considered in the same way, as a criminal offense for juveniles versus adults. There was discussion of who provides the oversight of the clean up. Council Member Miller suggested volunteers be used for oversight. He asked if graffiti can be cleaned within 24 hours to prevent more graffiti.

Mr. Holloway reported an initial cleanup was discussed by the Downtown Advisory Committee. He stated current funds dedicated to the façade grant may be used in the "clean" sweep of the 24 properties that have suffered graffiti. He stated they would use contractors to clean up. **The Council agreed by consensus to the clean sweep program and to use funds from the façade grant to pay for the clean up.** Mr. Connet stated the Police Department has been included in the plan. Chief Blake commented he believes most of the graffiti is probably not done by gangs.

**Mayor Pro Tem Caraker moved Council adopt an ordinance amending Section 26-38 of the Code of Ordinances pertaining to nuisances. A unanimous vote of the Council followed. Motion carried.**

Ordinance #17-1076

**AN ORDINANCE AMENDING SECTION 26-38 OF THE CODE OF ORDINANCES PERTAINING TO NUISANCES**

WHEREAS, the Code of Ordinances Chapter 26 Article II provides for the abatement and control of nuisances, and

WHEREAS, section 26-38 of the Code of Ordinances contains provisions enumerating examples of nuisances covered by the said Chapter 26 Article II, and

WHEREAS, the City Council has determined that the existence of graffiti carries with it the probability of deleterious secondary effects within the City, and

WHEREAS, the City Council has determined that it is in the interest of the health, safety and welfare of the residents of and visitors to the City for the City to eliminate to the extent possible the existence of graffiti on external surfaces within the City, and

WHEREAS, the City Council believes that an effective way to eliminate such graffiti within the City is to declare it a nuisance,

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

SECTION 1. Section 26-38 of the Hendersonville Code of Ordinances is hereby amended to read as follows:

Sec. 26-38. - Enumeration. The existence of any of the following conditions, among others, on any lot, parcel of land, residence or building is, among any other conditions, hereby declared to be noxious, dangerous and prejudicial to the public health and to constitute a nuisance and to be violative of the provisions of this article:

- (1) Any growth of weeds or grass to a greater height than 24 inches.
- (2) Any accumulations of animal or vegetable matter, or any other material, which is offensive by virtue of strong odors, vapors, deterioration or decay, or has become infested with rats, mice, snakes or vermin of any kind.
- (3) Any other condition which to a person of reasonable intelligence and discretion would constitute a condition dangerous or prejudicial to the public health.
- (4) Any accumulation of trash, refuse, junk or other discarded material not either placed in an authorized receptacle with a reasonable expectation that it would be collected for disposal or recycling or stored in an authorized solid waste or recycling facility.
- (5) Graffiti, which is defined as any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any

external surface of public or private property by an implement, to the extent that graffiti was not authorized in advance by the owner or possessor.

SECTION 2. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this fifth day of October 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner, City Attorney

## **8. Consideration of a Request to Install Four-Way Stop at the Intersection of Dale and S.**

**Whitted Street:** Mr. Connet presented information as a follow-up from a community meeting. He stated neighbors are concerned about speeding on S. Whitted Street, particularly between Allen Street and Hebron Road. He stated concerns have been expressed about pedestrians crossing in the area of Dale Street and S. Whitted St. and some concerns about noise related to the number of vehicles.

Mr. Connet reported existing conditions. He stated two studies were done by the Police Department along with using traffic radar signs and a secondary radar device. He provided the results of the studies that shows some speeding. He acknowledge what he heard from the residents at the community meeting: the residents believe there is a significant speed problem and are concerned about their safety and the safety of the children that live there. He stated the residents believe the studies were affected by outside factors and that without a change, the problem will only get worse.

Mr. Connet presented some options to the City Council:

- Encourage on-street parking in the north-bound lane between the railroad and Dale Street. The curb or street could be painted to ensure adequate site distance from the Dale Street intersection.
- Install semi-permanent solar-powered radar speed limit signs to reinforce 25 MPH speed limit. He estimated a cost \$3,000 to \$6,000 each.
- Create four-way intersection at Dale Street. This would allow for pedestrian/children access to sidewalk on west side of S. Whitted and by default slow down traffic. Staff believes a three-way stop sign may negatively impact the business at the intersection of Lennox Park and S. Whitted Street because of the proximity to the driveway.

The Council engaged in conversation with the neighbors present of the different options to slow traffic without creating a lot of noise. Mayor Pro Tem Caraker suggested milling the asphalt approximately one inch on both sides of the railroad track to slow traffic. Member Stephens voiced support of on-street parking to slow traffic. Mr. Connet suggested painting the curb to delineate where parking is permitted to reduce sight-distance issues close to the intersection and marked crosswalks. Mayor Pro Tem Caraker stated solutions may be applied incrementally. There was discussion on the installation of crosswalks and appropriate placement of the four-way stop sign.

After discussion, **Mayor Pro Tem Caraker moved Council to approve the milling of the asphalt on either side of the railroad tracks, and the establishment of a four-way stop at the intersection of S. Whitted and Dale Street, provide for on-street parking and installing crosswalks at the intersection. A unanimous vote of the Council followed. Motion carried.**

**9. Presentation of Berkeley Mills Park Disc Golf:** Mr. Jay McCarthy presented information on installing a disc golf course at Berkeley Mills Park. He explained it is traditional golf played with a Frisbee. He stated his motivation is to provide another recreation and physical exercise for children and adults.

Mr. McCarthy stated they can install the course in an under-utilized area of the park. He estimated the installation cost of \$20,000 but there are local business owners who are willing to sponsor the course and he will waive his design fee. He stated the presence of disc golf will deter crime, graffiti and other issues.

Mr. McCarthy stated he has reviewed the Berkeley Mills Park Master Plan. He provided a drawing of the proposed course and stated the course could be easily moved to accommodate other uses.

There was discussion of the court at Jackson Park, the design of the court, and the possibility of a nine-hole course versus an 18-hole course. Mr. Connet stated the course could also have nine baskets and 18 t-boxes. Mayor Volk commented she is not ready to make a decision and would like additional time to consider the proposal. The Council members agreed by majority consensus. **No decision was made by the Council.**

**10. Consideration of a Resolution Providing For, Among Other Things, the Issuance of \$1,352,000 General Obligation Refunding Bond of the City and the Associated Escrow Fund Agreement and Budget Amendment:** Finance Director Lisa White presented a resolution for \$1,352,000 of General Obligation Refunding Bond which will replace the 2008 sidewalk bonds of \$1,300,000 that are due to mature in March 2027. She stated the new bonds will also mature in March 2027.



Ms. White also requested Council’s consideration and approval of the escrow agreement with U.S. Bank National Association who will hold the 2008 bonds in escrow and pay them in defeasance and the budget amendment associated with that transaction which will save the City \$7,509 this fiscal year and \$90,372 over the life of the bonds. Mayor Volk asked for questions from the Council.

Mayor Pro Tem Caraker moved City Council:

1. Adopt a Resolution of the City of Hendersonville, North Carolina, Providing For, Among Other Things, the Issuance of \$1,352,000 General Obligation Refunding Bond of the City of Hendersonville North Carolina, and
2. Approve the execution of the Escrow Agreement with U.S. Bank National Association, and
3. Approve the Associated Budget Amendment.

A unanimous vote of the Council followed. Motion carried.

Resolution #17-1077

**A RESOLUTION OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA PROVIDING FOR, AMONG OTHER THINGS, THE ISSUANCE OF \$1,352,000 GENERAL OBLIGATION REFUNDING BOND OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA**

WHEREAS, the Bond Order (as defined below) has been adopted, and it is desirable to make provision for the issuance of the City’s General Obligation Refunding Bond, Series 2017 (the “Bond”) authorized by the Bond Order to pay the costs, together with other available funds of the City, of refunding in advance of their maturities the outstanding \$1,300,000 aggregate principal amount of the City of Hendersonville, North Carolina General Obligation Sidewalk Bonds, Series 2008 maturing on and after March 1, 2019;

WHEREAS, the City desires to issue the Bond and to request that the Local Government Commission (the “Commission”) sell the Bond to City National Bank of Florida (the “Purchaser”) in accordance with the terms provided herein;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City, as follows:

1. For purposes of this Resolution, the following words will have the meanings ascribed to them below:

“Bond” means the City’s General Obligation Refunding Bond, Series 2017 authorized under the Bond Order for the purpose of refunding in advance of their maturities \$1,300,000 aggregate principal amount of the City of Hendersonville, North Carolina General Obligation Sidewalk Bonds, Series 2008 maturing on and after March 1, 2019.

“Bond Order” means the Bond Order authorizing the Bond adopted by the City Council on September 7, 2017 and effective on its adoption.

“City Council” means the City Council of the City.

“Code” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code in this Resolution is deemed to include the United States Treasury Regulations proposed or in effect with respect to such section.

“Escrow Agent” means U.S. Bank National Association.

“Escrow Agreement” means the escrow agreement between the City and the Escrow Agent established for the payment of principal and interest of the Refunded 2008 Bonds until the redemption date of the Refunded 2008 Bonds.

“Federal Securities” means, to the extent otherwise permitted by the General Statutes of North Carolina, as amended, (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, or (iv) in certificates of deposit issued by a bank or trust company located in the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured.

“Finance Director” means the City’s Finance Director.

“Purchaser” means City National Bank of Florida.

“Refunded 2008 Bonds” means the outstanding \$1,300,000 aggregate principal amount of the City’s General Obligation Sidewalk Bonds, Series 2008 maturing on and after March 1, 2019.

“2008 Bonds” means the City’s General Obligation Sidewalk Bonds, Series 2008, issued in the initial principal amount of \$2,100,000.

2. The City will issue \$1,352,000 in total aggregate principal amount of its Bond.
3. The Bond will be dated as of its date of issuance and will mature and be payable on March 1, 2027, subject to mandatory sinking fund redemption as set forth below. The Bond shall pay interest semiannually on March 1 and September 1, beginning March 1, 2018. The Bond is being issued to provide funds to refund in advance of their maturities the Refunded 2008 Bonds pursuant to and in accordance with the Bond Order and to pay the costs of issuing the Bond.
4. The Bond will be numbered “R-1” and will bear interest from its date at a rate of 2.02% computed on the basis of a 360 day year of twelve 30 day months.
5. The Bond will be registered as to principal and interest and the Finance Director is directed to maintain the registration records with respect thereto. The Bond will bear the original or facsimile signatures of the Mayor of the City or the City Manager of the City and the City Clerk. An original or facsimile of the seal of the City will be imprinted on the Bond.
6. The Bond is not subject to optional redemption prior to its stated maturity. The Bond is subject to mandatory sinking fund redemption before maturity in part at the redemption price of 100% of the principal amount to be redeemed, without premium, on each March 1 in the years and in the amounts as follows:

DATE	PRINCIPAL AMOUNT	
2018	\$ 9,000	2023 \$155,000
2019	166,000	2024 152,000

2020	164,000	2025	149,000
2021	161,000	2026	146,000
2022	158,000	2027*	92,000

\* Maturity

7. The Bond and the provisions for the registration of the Bond and for the approval of the Bond by the Secretary of the Commission will be in substantially the form set forth in Appendix A hereto.
8. The Finance Director is hereby authorized to execute a non-arbitrage certificate with respect to the Bond in order to comply with Section 148 of the Code and the applicable Income Tax Regulations thereunder.
9. The proceeds from the sale of the Bond, less the costs of issuance of the Bond to be paid from the proceeds of the Bond, necessary to defease and redeem the Refunded 2008 Bonds, will be deposited with the Escrow Agent, in an escrow fund created pursuant to the Escrow Agreement. The City Manager and the Finance Director, individually or collectively, are hereby authorized and directed to enter into the Escrow Agreement, a form of which has been made available to the City Council, but with such changes, modifications, additions or deletions therein as to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the City Council's approval of any and all changes, modifications, additions or deletions therein. The City Manager and the Finance Director, individually or collectively, are hereby authorized and directed to cause proceeds of the Bond deposited in the escrow fund created pursuant to the Escrow Agreement to be used to purchase Federal Securities to defease and redeem the Refunded 2008 Bonds. From and after the execution and delivery of the Escrow Agreement, the City Manager and the Finance Director are each hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Escrow Agreement as executed.
- Proceeds of the Bond to be used to pay the costs of issuance of the Bond will be deposited in a separate segregated account held by the City to be designated "City of Hendersonville, North Carolina General Obligation Refunding Bonds Cost of Issuance Account" and, until applied to pay costs of issuance of the Bond, will be invested and reinvested by the Finance Director as permitted by the laws of the State of North Carolina. The Finance Director will keep and maintain adequate records pertaining to such account and all disbursements therefrom so as to satisfy the requirements of the laws of the State of North Carolina and to assure that the City maintains its covenants with respect to the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation. To the extent any funds remain in such account on the initial interest payment date of the Bond, the Finance Director will apply them to pay interest on the Bonds on that date.
10. Actions taken by officials of the City to select paying and transfer agents, and a bond registrar, or alternate or successor agents and registrars pursuant to Section 159E 8 of the Registered Public Obligations Act, Chapter 159E of the General Statutes of North Carolina, are hereby authorized and approved.
11. The Commission is hereby requested to sell the Bond by private sale to the Purchaser subject to the provisions hereof as permitted by Section 159-123(b)(5) of the General Statutes of North Carolina, as amended. The Bond will be non-transferable, except to a bank, insurance company or similar financial institution or any other entity approved by the Commission.
12. The Mayor of the City, the City Manager, the Finance Director and the City Clerk are hereby authorized and directed to cause the Bond to be prepared and, when it has been duly sold by the Commission, to execute the Bond and to turn the Bond over to the registrar and transfer agent of the City for delivery to the Purchaser.
13. The Mayor of the City, the City Manager, the City Attorney, the Finance Director and the City Clerk are each authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the documents contemplated hereinabove or as may be deemed necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

14. Portions of this Resolution may be amended or supplemented, from time to time, without the consent of the owner of the Bond if, in the opinion of nationally recognized bond counsel, such amendment or supplement would not adversely affect the interests of the owner of the Bond and would not cause the interest on the Bond to be included in the gross income of a recipient thereof for federal income tax purposes. All other amendments or supplements to this Resolution require the consent of the owner of the Bond, including any amendment or supplement that would reduce the principal amount of the Bond, reduce the interest rate payable on it, extend its maturity or the times for paying interest, change the monetary medium in which principal and interest is payable.
- Any act done pursuant to a modification or amendment consented to by the owner of the Bond is binding on all owners of the Bond and will not be deemed an infringement of any of the provisions of this Resolution, whatever the character of the act may be, and may be done and performed as fully and freely as if expressly permitted by the terms of this Resolution, and after consent has been given, no owner of the Bond has any right or interest to object to the action, to question its propriety or to enjoin or restrain the City from taking any action pursuant to a modification or amendment.
15. Nothing in this Resolution will preclude the payment of the Bond from (a) the proceeds of refunding bonds or (b) any legally available funds.

If the City causes to be paid, or has made provisions to pay, on maturity or on redemption before maturity, to the owner of the Bond the principal of the Bond (including interest to become due thereon) and, premium, if any, on the Bond, through setting aside trust funds or setting apart in a reserve fund or special trust account created pursuant to this Resolution or otherwise, or through the irrevocable segregation for that purpose in some sinking fund or other fund or trust account with an escrow agent or otherwise, money sufficient therefor, including, but not limited to, interest earned or to be earned on Federal Securities, such Bond will be considered to be discharged and satisfied, and the principal of the Bond will no longer be deemed to be outstanding and unpaid; provided, however, that nothing in this Resolution requires the deposit of more than such Federal Securities as may be sufficient, taking into account both the principal amount of such Federal Securities and the interest to become due thereon, to implement any such defeasance.

In the event of such a defeasance and after the City receives an opinion of a nationally recognized accounting firm that the segregated money or Federal Securities together with interest earnings thereon are sufficient to effect a defeasance, the City will execute and deliver all such instruments as may be necessary to effect such a defeasance and desirable to evidence such release, discharge and satisfaction. Provisions will be made by the City for the mailing of a notice to the owner of the Bond that such money is available for such payment.

16. All acts and doings of the Mayor of the City, the City Manager, the City Attorney, the Finance Director and the City Clerk that are in conformity with the purposes and intents of this Resolution and in the furtherance of the issuance of the Bond are in all respects approved and confirmed.

17. If any one or more of the agreements or provisions herein contained is held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or for any reason whatsoever is held invalid, then such covenants, agreements or provisions are null and void and separable from the remaining agreements and provisions and will in no way affect the validity of any of the other agreements and provisions hereof or of the Bond authorized hereunder.

18. All resolutions or parts thereof of the City Council in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

19. After the issuance of the Bond, the remaining amount of the Bond Order that is authorized but unissued will be considered repealed.

20. This Resolution is effective on its adoption.

On motion of Mayor Pro Tem Steve Caraker, seconded by Council Member N/A the foregoing resolution entitled "A RESOLUTION OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA PROVIDING FOR, AMONG OTHER THINGS, THE ISSUANCE OF \$1,352,000 GENERAL OBLIGATION REFUNDING BOND OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA" was adopted by the following vote:

AYES: 5 (UNANIMOUSLY)

NAYS:

PASSED, ADOPTED AND APPROVED this fifth day of October, 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

**Parker Poe Draft 9/27/17**

#### **ESCROW AGREEMENT**

*ESCROW AGREEMENT* dated as of October 17, 2017 between the **CITY OF HENDERSONVILLE, NORTH CAROLINA** (the "*City*") and **U.S. BANK NATIONAL ASSOCIATION**, as escrow agent (the "*Escrow Agent*"), a national banking association organized and existing under the laws of the United States of America, being authorized to accept and execute trust of the character herein set out under and by virtue of the laws of the State of North Carolina (the "*State*").

#### **W I T N E S S E T H:**

*WHEREAS*, the City has issued its General Obligation Sidewalk Bonds, Series 2008 (the "*2008 Bonds*");

*WHEREAS*, the City wishes to refund the outstanding 2008 Bonds maturing on and after March 1, 2019 (the "*Refunded Bonds*");

*WHEREAS*, the City has determined to issue its General Obligation Refunding Bond, Series 2017 (the "*2017 Bond*") under a Bond Order related to the Refunded Bonds adopted by the City Council of the City on September 7, 2017 and effective on its adoption (the "*Bond Resolution*"), for the purpose of paying the cost of refunding the Refunded Bonds in advance of their stated maturities; and

*WHEREAS*, the Bond Resolution authorizes a portion of the proceeds of the 2017 Bond to be deposited in the Escrow Fund established under this Agreement; and

*WHEREAS*, this Agreement sets forth the understandings and agreements of the City and the Escrow Agent with respect to the Refunded Bonds and the Escrow Fund;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, and intending to be legally bound, the City and the Escrow Agent covenant and agree:

#### **ARTICLE I**

#### **DEFINITIONS**

As used in this Agreement, unless clearly implied, the following terms shall have the following meanings:

"*Agreement*" means this Escrow Agreement dated as of October 17, 2017 between the City and the Escrow Agent.

"*Bond Resolution*" means the Bond Resolution adopted by the City Council of the City on October 5, 2017 under which the 2017 Bond is being issued.

"*City*" means the City of Hendersonville, North Carolina, or any successor to its functions.

"*Escrow Agent*" means U.S. Bank National Association, and its successors and assigns, in its capacity as escrow agent hereunder.

"*Escrow Fund*" means the Escrow Fund created in Section 2.01 which shall be applied to the payment of Refunded Bonds as provided herein.

"*Federal Securities*" means, to the extent otherwise permitted by the General Statutes of North Carolina, as amended, (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, or (iv) in certificates of deposit issued by a bank or trust company located in the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured.

"*LGC*" means the Local Government Commission of North Carolina.

"*Refunded Bonds*" means the 2008 Bonds maturing on and after March 1, 2019.

"*State*" means the State of North Carolina.

"*2008 Bonds*" means \$1,300,000 aggregate principal amount of the City's General Obligation Sidewalk Bonds, Series 2008.

"*2017 Bond*" means the General Obligation Refunding Bonds, Series 2017 issued by the City in the aggregate principal amount of \$1,352,000.

"*Verification Report*" means the verification report dated October 17, 2017 by Bingham Arbitrage Rebate Services Incorporated in connection with the issuance of the 2017 Bond and the defeasance of the Refunded Bonds.

## ARTICLE II

### CREATION OF ESCROW FUND

Section 2.01. *Escrow Fund.* There is hereby created and established with the Escrow Agent a special and irrevocable escrow fund designated the Escrow Fund to be held in the custody of the Escrow Agent separate and apart from other funds and accounts of the City or the Escrow Agent.

Section 2.02. *Initial Deposit.* Concurrently with the execution of this Agreement and the date that the 2017 Bond is issued, the City has caused to be deposited with the Escrow Agent, and the Escrow Agent acknowledges receipt of \$1,321,396.66 from the proceeds of the 2017 Bond. Concurrently with the receipt of such funds, the Escrow Agent shall deposit \$1,321,396.66 in the Escrow Fund. Amounts deposited in the Escrow Fund will be simultaneously applied to the purchase of the Federal Securities described in Schedule II hereto ("*Schedule II*"), except to the extent of balances designated in Schedule II to be uninvested. The Federal Securities shall mature in principal amounts and pay interest in such amounts so that sufficient moneys will be available to pay (1) the interest on the Refunded Bonds through March 1, 2018 and (2) the principal of the Refunded Bonds on March 1, 2018, at which time the outstanding principal of and interest on the Refunded Bonds will be paid in full. In reliance on the Verification Report, the City hereby finds and determines that the investments described in Schedule II are advantageous in yield and maturity date to provide sufficient moneys to redeem the Refunded Bonds, and to comply with United States Department of the Treasury regulations adopted or applicable pursuant to the Internal Revenue Code of 1986, as amended. If such amounts are insufficient, the City shall timely deposit in the Escrow Fund any additional necessary amounts. The Escrow Agent shall give the City notice of an insufficiency as promptly as possible after the Escrow Agent has actual knowledge of the insufficiency, but the Escrow Agent has no liability whatsoever for a failure to give such notice or for such insufficiency except as set forth in Section 4.04.

Section 2.03. *Irrevocable Deposit; Control.* The deposit in the Escrow Fund of the proceeds of the 2017 Bond constitutes an irrevocable deposit of such money exclusively for the benefit of the Refunded Bonds, and such money and Federal Securities, together with any income or interest earned thereon, shall be held in trust and shall be applied solely to the payment of the principal, premium, and interest with respect to the Refunded Bonds as the same mature and become due, as set forth in Schedule I hereto ("*Schedule I*"). Subject to the requirements set forth herein for the use of the Escrow Fund and the moneys and investments therein, including, without limitation, Section 3.02, the City covenants and agrees that the Escrow Agent shall have full and complete control and authority over and with respect to the Escrow Fund and moneys and investments therein and that the City shall not exercise any control or authority over and with respect to the Escrow Fund and the moneys and investments therein.

The City irrevocably directs the Escrow Agent to call the Refunded Bonds for redemption on March 1, 2018.

Section 2.04. *Reinvestment; SLGS.*

(a) Cash or other Federal Securities other than any Federal Securities listed in Schedule II may be substituted at the written direction of the City but only if such cash or Federal Securities:

- (1) are in an amount or mature in an amount, which together with any cash or Federal Securities substituted for the Federal Securities listed in Schedule II is equal to or greater than the amount required to pay the principal of and interest on the Refunded Bonds;
- (2) mature on or before the date amounts are due on the Refunded Bonds under Schedule I; and
- (3) the City and the Escrow Agent receive an opinion of nationally recognized bond counsel stating that such substitution will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Refunded Bonds or the 2017 Bond.

(b) The Escrow Agent is also hereby authorized and directed to reinvest proceeds of the Federal Securities which are attributable to amounts received as principal of or interest on the Federal Securities and not immediately needed to pay principal of and interest on the Refunded Bonds in Federal Securities with a yield not in excess of zero percent unless the Escrow Agent is directed in writing by the City to invest such amounts in other Federal Securities after the City obtains an opinion of nationally recognized bond counsel to the effect that such investment would not cause any of the Refunded Bonds to be arbitrage bonds under Section 103(c) of the Code and the applicable regulations thereunder. Such amounts are to be continuously invested in Federal Securities maturing on or before the date such funds are needed to pay the principal of or interest on the Refunded Bonds.

If available, the Escrow Agent shall purchase United States Treasury Obligations - State and Local Government Series ("*SLGS*"), and, by at least 7 days (or such different time as may hereafter be established by regulations of the United States Bureau of Public Debt) prior to such purchase, shall execute and file with a Federal Reserve Bank or Branch a subscription for the purchase and issuance of such SLGS with such terms as may be required to effect such purchase on such date.

(c) The Escrow Agent shall transfer any investment earnings resulting from the reinvestment of proceeds of the Federal Securities as described herein and any excess above the amount required to pay the principal of and interest on the Refunded Bonds to the City to be used for any lawful purposes.

## ARTICLE III

### DUTIES OF THE ESCROW AGENT; FEES AND COSTS

Section 3.01. *Payments on Refunded Bonds.* The Escrow Agent, without further authorization and direction from the City, shall pay to the owners of the Refunded Bonds, from money available in the Escrow Fund, on the date on which each payment of principal and interest falls due, money sufficient to pay the principal and interest falling due on the Refunded Bonds as set forth in Schedule I hereto. Such payments shall be made from the principal of and interest on money in the corresponding account of the Escrow Fund securing the Refunded Bonds and shall be made to the Depository Trust Company, or if notified by the City, other persons entitled thereto.

Section 3.02. *Investment of Escrow Fund.* The Escrow Agent shall purchase or cause to be purchased those Federal Securities listed in Schedule II solely from the money deposited by the City in the Escrow Fund. The Escrow Agent shall apply the money deposited in such account and the Federal Securities, together with any income or interest earned thereon, in accordance with this Agreement. The Escrow Agent has no power or duty to invest any money held hereunder or to make substitutions of the Federal Securities held hereunder or to sell, transfer or otherwise dispose of the Federal Securities acquired hereunder except as provided herein. The Escrow Agent may, at the request of the City, sell or redeem all or a portion of the Federal Securities held for the credit of the Escrow Fund and reinvest the required proceeds of such sale or

redemption, in Federal Securities designated in such request of the City, but only on receipt by the Escrow Agent of (1) an opinion of counsel acceptable to the City and the Escrow Agent, which must be nationally recognized bond counsel, stating that the Refunded Bonds are deemed defeased and that the compliance with such request of the City will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on such bonds and (2) a certificate of an independent verification agent stating that after giving effect to such request the Federal Securities held for the credit of such account are of such maturities and interest payment dates and bear such interest as will, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon, be sufficient together with all cash and other immediately available invested funds held for the credit of such account to pay the principal of and interest on the Refunded Bonds when due and as described in this Agreement.

The liability of the Escrow Agent for the payment of the principal of and interest on the Refunded Bonds pursuant to this Section is limited to the cash available for such purposes in the Escrow Fund. The City shall not direct the Escrow Agent to exercise any of its powers to cause any part of the money or funds at any time in the Escrow Fund to be used directly or indirectly to acquire any obligations which would cause any Refunded Bond to be an "*arbitrage bond*" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

Section 3.03. *Escrow Agent's Fees.* The Escrow Agent's fees and costs for and in carrying out the provisions of this Agreement have been fixed, which fees and costs are to be paid by the City as they are due from funds of the City or from funds other than the principal amount of the deposit in the Escrow Fund on the date hereof. The City will bear all costs of publication and mailing of notices required by this Agreement and the resolutions authorizing the issuance of the Refunded Bonds. The City agrees to indemnify the Escrow Agent, to the extent permitted by law, against any liability which it may incur while acting in good faith in its capacity as Escrow Agent except for its own negligence, misconduct or default, such indemnification including, but not limited to, any court costs and reasonable attorneys' fees. Any costs, fees or other expenses of the Escrow Agent under this Agreement may not, however, be paid from the principal amount of the deposit in the Escrow Fund on the date hereof. The Escrow Agent is not liable for any loss resulting from any investment made at the direction of the City pursuant to the terms and provisions of this Agreement.

Section 3.04. *Notices to Refunded Bondowners.* The Escrow Agent shall give notice to the registered owners from time to time of the Refunded Bonds in accordance with the instructions received from the City in connection with this Agreement. The Escrow Agent is hereby instructed to give notice of defeasance as soon as practicable, substantially in the form attached to this Agreement as Exhibit B, by certified mail (or as otherwise permitted by DTC) to the registered owners of the Refunded Bonds and by first-class mail, postage prepaid and to each rating agency then rating the Refunded Bonds. The Escrow Agent shall give notices of redemption, substantially in the forms attached to this Agreement as Exhibit A, by certified mail (or as otherwise permitted by DTC) to the registered owners of the Refunded Bonds and by first-class mail, postage prepaid, to the LGC, and to the securities depositories and national information services as required by the bond resolution under which the Refunded Bonds were issued. The Escrow Agent will also post the defeasance notice and the redemption notices on the Municipal Securities Rulemaking Board's EMMA system.

Section 3.05. *Resignation of Escrow Agent.* The Escrow Agent may resign and thereby become discharged from the trusts hereby created by notice in writing given to the City and the Owners of the Refunded Bonds as their names appear on the registration books for the Refunded Bonds as of the 15<sup>th</sup> day prior to the mailing of such notice, not less than 60 days before such resignation shall take effect. The Escrow Agent agrees to serve as Escrow Agent until a successor is appointed; *provided, however*, if the City fails to appoint such successor within 45 days after receipt of notice of resignation by the incumbent Escrow Agent, the incumbent Escrow Agent may appoint such successor. Such resignation shall take effect immediately, however, upon the appointment of a successor Escrow Agent hereunder, if such successor Escrow Agent shall be appointed before the time limited by such notice and shall then accept the trusts thereof. In the event of the resignation of the Escrow Agent prior to the expiration of this Agreement, the Escrow Agent shall rebate to the City a ratable portion of any fee theretofore paid by the City to the Escrow Agent for its services under this Agreement.

Any successor escrow agent appointed hereunder shall be a bank or trust company (1) which is duly authorized to exercise corporate trust powers and subject to examination by federal or State authority, (2) of good standing, (3) having a combined capital, surplus and undivided profits aggregating not less than \$100,000,000 and (4) acceptable to the LGC.

#### ARTICLE IV

##### GENERAL PROVISIONS

Section 4.01. *Escrow Fund Irrevocable.* The Escrow Fund hereby created is irrevocable and the owners of the Refunded Bonds are hereby granted an express lien on the Escrow Fund until applied in accordance with this Agreement.

The Escrow Agent shall hold the Escrow Fund as a separate fund wholly segregated from all other funds and accounts held in any capacity and shall make disbursements from such accounts only in accordance with the provisions of this Agreement. The principal of and interest on the Federal Securities shall not be reinvested except as provided in Section 2.04 and Section 3.02, and the Escrow Agent shall not sell or dispose of such securities except as provided in Section 2.04 and Section 3.02.

Under no circumstances shall the Escrow Agent have a lien on the Escrow Fund for its charges, fees and expenses and under no circumstances shall the Escrow Agent make any claim against the Escrow Fund for such charges, fees and expenses.

Section 4.02. *Report.* The Escrow Agent shall deliver to the City on or before the fifteenth business day of each month a report of each transaction relating to the Escrow Fund through the last business day of the preceding month. Notwithstanding the provisions of Section 4.09, such delivery may be made through electronic means.

Section 4.03. *Refunded Bondowner Rights.* The Escrow Agent and the City agree that the owners of the Refunded Bonds have a beneficial and vested interest in the Escrow Fund as herein provided. It is therefore recited, understood and agreed that, until the provisions hereof have been fully carried out, this Agreement (a) may be amended only to cure ambiguity or correct manifest error without the prior written consent of all of the owners of the Refunded Bonds and (b) is not subject to amendment for any other reason or revocation except with the prior written consent of all of the owners of the Refunded Bonds.

Section 4.04. *Deficiency.* If there is any deficiency in the Escrow Fund, the City will remedy such deficiency by paying to the Escrow Agent the amount of such deficiency. The Escrow Agent is not liable for any such deficiency, except as such deficiency may be caused by its negligence or willful misconduct.

Section 4.05. *Termination.* This Agreement terminates when all payments of the principal, premium and interest with respect to the Refunded Bonds required to be made to the owners of the Refunded Bonds under the bond resolution under which they were issued have been made; provided, however, that the indemnification provisions of Section 3.03 will survive any such termination.

Section 4.06. *Severability.* If any one or more of the covenants or agreements provided in this Agreement on the part of the parties hereto to be performed should be determined by a court of competent jurisdiction to be contrary to law, (a) such covenant or agreement is to be deemed and construed to be severable from the remaining covenants and agreements herein contained and in no way affects the validity of the remaining provisions of this Agreement, (b) the City shall provide notice thereof to each of the rating agencies then rating the 2017 Bond.

Section 4.07. *Law.* This Agreement shall be governed exclusively by the laws of the State. It inures to and is binding on the parties hereto and their respective successors and assigns. This Agreement is deemed made in Henderson County, North Carolina. The exclusive forum and venue for all actions arising out of this Agreement is the North Carolina General Court of Justice in Henderson County. Such actions shall neither be commenced nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

Section 4.08. *Counterparts.* This Agreement may be executed in several counterparts, all or any of which are regarded for all purposes as one original and constitute one and the same instrument.

Section 4.09. *Notices.* Any notice or other communication to be given under this Agreement shall be in writing and may be given by certified mail (postage prepaid, return receipt requested), electronic means or personal delivery, if to the City, to the City of Hendersonville, North Carolina, 145 Fifth Avenue East, Hendersonville, North Carolina 28792, Attention: City Manager, and if to the Escrow Agent, to U.S. Bank National Association, 5540 Centerview Drive, Suite 200, Raleigh, North Carolina 27606, Attention: Global Corporate Trust Services.

Section 4.10. *Covenants of City or the LGC not Covenants of Officials Individually.* No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, director, agent, officer or employee of the City or the LGC in his or her individual capacity, and neither the members of the Board, the members of the LGC nor any other member, director, agent, officer or employee of the City or the LGC is subject to any personal liability under this Agreement.

Section 4.11. *References to Fees and Expenses.* Wherever this Agreement contains a reference to fees or expenses, such reference is deemed to include the word “reasonable” as an antecedent thereto.

Section 4.12. *E-verify.* The Escrow Agent understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Escrow Agent uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Escrow Agent will require that any subcontractor that it uses in connection with the transactions contemplated by this Escrow Agreement certify to such subcontractor's compliance with E-Verify. [SIGNATURES BEGIN ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the Escrow Agent and the City have caused this Agreement to be executed by their duly authorized officers, as of the 17<sup>th</sup> day of October, 2017.

**U.S. BANK NATIONAL ASSOCIATION**, as Escrow Agent  
By: /s/Shawna L. Hale, Vice President

[Signatures Continued on Following Page]  
[Counterpart Signature Page to the Escrow Agreement]

**CITY OF HENDERSONVILLE, NORTH CAROLINA**  
By: /s/ Barbara G. Volk, Mayor

**SCHEDULE I**

ESCROW REQUIREMENTS

City of Hendersonville, North Carolina  
General Obligation Refunding Bond, Series 2017  
Refunding of 2008 G.O. Bonds  
City National Bank Proposal - 2.02% Rate

Period Ending	Interest	Principal Redeemed	Total
03/01/2018	26,675.00	1,300,000.00	1,326,675.00
	26,675.00	1,300,000.00	1,326,675.00

The Refunded Bonds are to be called on March 1, 2018 at the principal amount thereof plus accrued interest to the redemption date.

**SCHEDULE II**

**FEDERAL SECURITIES**

ESCROW DESCRIPTIONS

City of Hendersonville, North Carolina  
General Obligation Refunding Bond, Series 2017  
Refunding of 2008 G.O. Bonds  
City National Bank Proposal - 2.02% Rate

Type of Security	Type of SLGS	Maturity Date	First Int Pmt Date	Par Amount	Rate	Max Rate
Oct 17, 2017:						
SLGS	Certificate	03/01/2018	03/01/2018	1,321,396	1.080%	1.080%
				1,321,396		

\* There will be an initial cash deposit equal to \$0.66 held uninvested.

**EXHIBIT A**  
**NOTICE OF REDEMPTION**  
**\$2,100,000**  
**City of Hendersonville, North Carolina**  
**General Obligation Sidewalk Bonds, Series 2008**

DATE (MARCH 1)	PRINCIPAL	CUSIP*
2019	\$150,000	428380GK2
2020	150,000	428380GL0
2021	150,000	428380GM8
2022	150,000	428380GN6
2023	150,000	428380GP1
2024	150,000	428380GQ9
2025	150,000	428380GR7
2026	150,000	428380GS5
2027	100,000	428380GT3

**NOTICE IS HEREBY GIVEN** by the City of Hendersonville, North Carolina (the "*City*") of its intention to redeem all of the outstanding City of Hendersonville, North Carolina General Obligation Sidewalk Bonds, Series 2008 maturing on March 1, 2019 through March 1, 2027 (collectively, the "*Refunded Bonds*") on March 1, 2018 (the "*Redemption Date*") at the redemption price (the "*Redemption Price*") of 100% of the principal amount thereof plus accrued interest to the Redemption Date.

Payment of the Redemption Price for each of the Refunded Bonds will be made by wire transfer on the Redemption Date to The Depository Trust Company for the Refunded Bonds registered in the name of Cede & Co. in accordance with the rules and procedures of The Depository Trust Company.

**If by Mail: (REGISTERED and/or**  
**BEARER BONDS)**  
U.S. Bank  
Corporate Trust Services  
P.O. Box 64111  
St. Paul, MN 55164-0111

**If by Hand or Overnight Mail**  
U.S. Bank  
Corporate Trust Services  
111 Filmore Ave E  
St. Paul, MN 55107

Federal Securities sufficient to pay the Redemption Price have been deposited with U.S. Bank National Association, as escrow agent (the "*Escrow Agent*"), under an escrow agreement. Consequently, on the Redemption Date, the Refunded Bonds will cease to bear interest.

When presenting the Refunded Bonds for payment, bondholders should provide their tax identification number (via Form W-9) to avoid withholding of 28% of the principal paid as required by Federal Tax Law. Those holders who are required to provide their correct taxpayer identification number on IRS Form W-9 and who fail to do so may also be subject to an IRS penalty. Accordingly, please provide all appropriate certifications when presenting the Refunded Bonds for payment.

\* The City and the Escrow Agent shall not be responsible for the use of CUSIP numbers selected, nor is any representation made as to its correctness indicated in the notice or as printed on any certificate. It is provided solely for the convenience of the holders.

**CITY OF HENDERSONVILLE, NORTH CAROLINA**  
**By: U.S. BANK NATIONAL ASSOCIATION**, as escrow agent

Date: [Between January 2, 2017 and January 30, 2018]  
[mail to DTC, Local Government Commission, securities depositories and information service.]  
[Post continuing disclosure redemption notice on EMMA]

**EXHIBIT B**  
**NOTICE OF DEFEASANCE**  
**\$2,100,000**  
**City of Hendersonville, North Carolina**  
**General Obligation Sidewalk Bonds, Series 2008**

DATE (MARCH 1)	PRINCIPAL	CUSIP*
2019	\$150,000	428380GK2
2020	150,000	428380GL0
2021	150,000	428380GM8
2022	150,000	428380GN6
2023	150,000	428380GP1
2024	150,000	428380GQ9
2025	150,000	428380GR7
2026	150,000	428380GS5
2027	100,000	428380GT3

**NOTICE IS HEREBY GIVEN** by the City of Hendersonville, North Carolina (the "*City*") that, pursuant to the bond resolution adopted by the City Council of the City (the "*Bond Resolution*"), under which the City its General Obligation Sidewalk Bonds, Series 2008 (the "*2008 Bonds*"), that there has been deposited with the undersigned certain Federal Securities, as permitted under the Bond Resolution, the principal of and the interest on which when due, and without reinvestment thereof, are sufficient to pay (1) the interest on the 2008 Bonds maturing on March 1, 2019 through March 1, 2027 (the "*Refunded 2008 Bonds*") when due until March 1, 2018 and (2) 100% of the principal amount of the then-outstanding Refunded 2008 Bonds, on March 1, 2018.

U. S. Bank National Association, as escrow agent, has received irrevocable written instructions from the City to redeem the Refunded 2008 Bonds on March 1, 2018. Consequently, the Refunded 2008 Bonds will cease to bear interest on March 1,



2018. The Refunded 2008 Bonds are deemed to have been paid in accordance the Bond Resolution under which they were issued.

\* The City and the Escrow Agent shall not be responsible for the use of CUSIP numbers selected, nor is any representation made as to its correctness indicated in the notice or as printed on any certificate. It is provided solely for the convenience of the holders.

CITY OF HENDERSONVILLE, NORTH CAROLINA

By: U.S. BANK NATIONAL ASSOCIATION, as escrow agent

Date:

[As soon as practicable after the defeasance of the Refunded Bonds]

[(1) To [DTC](#) (the registered owners of the bonds), Moody's and S&P]

[Post continuing disclosure defeasance notice on EMMA]

**Budget Amendment:** Debt Service Fund, Amounts in Balance \$1,344,490, to issue General Obligation Refunding Bone Series 2017, Refund 2008 Sidewalk Bonds.

**11. Presentation on the Fire Department NC Response Rating:** The Council received a presentation from Fire Chief Joseph Vindigni on the North Carolina Response Rating - Public Protection Classification Survey recently completed by the Department of Insurance. Chief Vindigni reported the Hendersonville Fire Department's rating improved from to Class 3, overall score of 79.33 to from Class 4, overall score of 61.34. He stated there will be a follow-up meeting with the Department of Insurance to review the scores. The new rating will be effective December 1, 2017.

Chief Vindigni reported businesses and restaurants will realize a savings on their insurance premiums. He also reviewed the rating for the survey components. Mayor Volk expressed appreciation for the report. **No action was required or taken by the Council.**

**12. Consideration of Amendment to Board/Commission Appointment Procedures:** City Clerk Tammie Drake provided a proposal to assist in expediting the board and commission appointments.

Mrs. Drake presented a resolution calling for term expirations of all board and commission members in either June 30 or December 31. The announcements will be made in May and October and appointments will be made in June and December of the year the term expires. She believes this will provide ample time for public notice and for the Council members to review applications. City Attorney Fritschner provided a resolution and an ordinance amending the Code of Ordinance regarding the terms of the Planning Board.

Mrs. Drake stated the terms ABC Board and Tourism Development Authority are set by North Carolina General Statutes or resolution. She suggested the following boards/commission terms expire on June 30:

Board of Adjustment	Business Advisory Committee
Downtown Advisory Committee	Environmental Sustainability Board

The following board terms will expire December 31:

Seventh Avenue Advisory Committee	Historic Preservation Commission
Planning Board	Tree Board
Walk of Fame	Water/Sewer Advisory Council

Mrs. Drake suggested the process begin May 2018. She stated reminders of upcoming appointments and vacancies, not requiring action of the Council, will be given a staff report.

**Mayor Pro Tem Caraker moved Council's adoption of a resolution establishing dates for the commencement of terms for members of various boards and commissions, and an Ordinance amending Section 40-34 of the Code of Ordinances pertaining to terms of members of the Planning Board. A unanimous vote of the Council followed. Motion carried.**

Resolution #17-1078

**A RESOLUTION ESTABLISHING DATES FOR THE COMMENCEMENT OF TERMS  
FOR MEMBERS OF VARIOUS BOARDS AND COMMISSIONS**

WHEREAS the City of Hendersonville functions at its best using the special talents and knowledge of citizens residing in and around the City, and

WHEREAS the City Council, in order to avail itself of these talents and knowledge, has established a number of boards, commissions and committees pursuant to statute, ordinance and resolution, and

WHEREAS the City Council as part of this function establishes specific and definite terms of service for each of these boards, commissions and committees, and

WHEREAS it appears to the best judgment of the City Council that the appointment of members of these boards, commissions and committees would be best and most efficiently accomplished by the institution of more uniform term commencement dates for members,

NOW, BE IT THEREFORE RESOLVED that the City Council does hereby establish commencement and expiration dates as follows:

1. Commencement dates for members appointed by the City Council for the following shall be July 1 of the calendar year applicable to commencement, with expiration of the term to be June 30 of the calendar year applicable to expiration:

Board of Adjustment	Business Advisory Committee
Downtown Advisory Committee	Environmental Sustainability Board



2. Commencement dates for members appointed by the City Council for the following shall be January 1 of the calendar year applicable to commencement, with expiration of the term to be December 31 of the calendar year applicable to expiration:

Seventh Avenue Advisory Committee  
Planning Board  
Walk of Fame Steering Committee

Historic Preservation Commission  
Tree Board  
Water/Sewer Advisory Council.

3. All terms previously established to expire on any day other than as herein provided shall be extended to expire on the next following applicable date as established by this resolution.

4. Appointments by the City Council to boards, commissions and committees (which shall include the Water/Sewer Advisory Council) shall for parliamentary purposes be considered old business at any City Council meeting at which such appointments are taken up.

Adopted this fifth day of October 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Ordinance #17-1079

**AN ORDINANCE AMENDING SECTION 40-34 OF THE CODE OF ORDINANCES PERTAINING TO TERMS OF MEMBERS OF THE PLANNING BOARD**

WHEREAS, the City of Hendersonville's Planning Board is an integral part of the public services provided by the City of Hendersonville, and

WHEREAS, the City recognizes the services provided by the Planning Board and desires that the term of members of the Board shall be efficiently established as the City Council may from time to time determine,

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

SECTION 1. Section 40-34 of the Hendersonville Code of Ordinances is hereby amended read as follows:

**Sec. 40-34. - Terms of members.** The members of the planning board shall serve for terms of three years; provided, however, appointed terms may be adjusted from time to time as stated in this section. It is the intention that terms of members shall be staggered in a balanced fashion. To that end, terms may be modified by the appointing authority, as necessary, so that all terms shall commence ~~in the month of December~~ on such date as the city council shall from time to time provide and so that no ~~less~~ fewer than three and no more than four terms shall expire in any given year. Should it occur that any member no longer resides in the jurisdiction from which appointed, that member shall no longer be entitled to serve on the planning board and the position shall immediately be deemed vacant. Notwithstanding the foregoing, the city council may remove any member of the planning board for the exhibition of a pattern of conduct that materially impairs or seriously threatens the ability of the commission to carry out its designated functions.

SECTION 2. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date and time of its adoption.

Adopted this fifth day of October 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner, City Attorney

**13. Boards and Commissions: Consideration of (Re)Appointments, Announcement of Upcoming Vacancies:**

a) **Consideration of Appointments:** City Clerk Tammie Drake announced the (re)appointments and presented the applications on file.

**Environmental Sustainability Board:** Mayor Pro Tem Caraker nominated Mr. Ian Edwards for a two-year term. This term will expire 06/30/19. A unanimous vote of the Council followed. Motion carried.

**Seventh Avenue Advisory Committee:** Mayor Pro Tem Caraker nominated Rebecca Ayers. This term will expire 12/31/18. A unanimous vote of the Council followed. Motion carried.

**Water and Sewer Advisory Council:** Mr. Connet provided an update on the appointment process. Mayor Pro Tem Caraker was nominated to serve as the Council representative and Chairman of the first term by Council Member Miller. This term will expire 12/31/19. A unanimous vote of the Council followed. Motion carried.

Mr. Connet reported other appointments and stated the City will advertise and recruit a customer representative.

b) **Announcement of Vacancies and Upcoming Vacancies:** Mrs. Drake announced the vacancies and upcoming vacancies/reappointments: Board of Adjustment, Downtown Advisory Committee, Hendersonville Sister Cities and the Historic Preservation Commission.

**14. Comments for Mayor and City Council Members:** There was none.

**15. Reports from Staff:** There was none.

**16. New Business:** There was none.

**17. Adjournment:** The meeting adjourned at 7:53 p.m. upon unanimous assent of the Council.

\_\_\_\_\_  
Barbara G. Volk, Mayor

\_\_\_\_\_  
Tammie K. Drake, City Clerk